

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR  
3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116  
TELEPHONE (202) 424-7500  
FACSIMILE (202) 424-7645  
WWW.SWIDLAW.COM

NEW YORK OFFICE  
THE CHRYSLER BUILDING  
405 LEXINGTON AVENUE  
NEW YORK, NY 10174  
TEL. (212) 973-0111  
FAX (212) 891-9596

JAN 09 2003

January 9, 2003

**VIA COURIER**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Wireline Competition Bureau, Competition Policy Division  
P.O. Box 358145  
Pittsburgh, PA 15251-5145

Re: **Application of Teleglobe USA Inc. (Debtor-in-Possession) *et al.* for  
Approval of Assignment and Transfer of Control of Domestic Section  
214 Authorizations**

Dear Secretary Dortch:

On behalf of Teleglobe USA Inc. (Debtor-in-Possession) ("Old Teleglobe"), Teleglobe Inc. (Debtor-in-Possession) ("Teleglobe Inc."), Teleglobe USA LLC ("New Teleglobe"), and TLGB Corporation ("TLGB") (together "Applicants"), enclosed for filing please find an original and five (5) copies of *an* application for Commission approval to carry out the *pro forma* assignment of the domestic Section 214 authorization held by Old Teleglobe to New Teleglobe and the subsequent transfer of control of New Teleglobe from Teleglobe to TLGB (the "Application"). Applicants also enclose an FCC Form 159 and payment authorization for the \$860.00 filing fee required in connection with the Application.

The Application is a joint International and domestic Section 214 transfer application, prepared pursuant to Section 63.04(b) of the Commission's Rules, 47 C.F.R. § 63.04(b). A copy of this Application and the required fee also have been filed with the International Bureau. Concurrent with this Application, Applicants have filed a separate application for approval **to** transfer control of Teleglobe's subsidiaries that hold submarine cable landing licenses issued by *the* Commission,

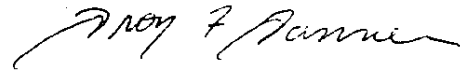
Marlene H. Dortch, Secretary

January 9, 2003

Page 2

Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided. Please direct any questions to Troy Tanner at (202) 295-8360.

Respectfully submitted.

A handwritten signature in black ink, appearing to read "Troy F. Tanner".

Catherine Wang

Troy F. Tanner

Counsel for Applicants

Enclosures

cc: William Dever (WCB) (*via e-mail*)  
Tracey Wilson (WCB) (*via e-mail*)

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Teleglobe USA Inc.	)	
(Debtor-in-Possession)	)	
Assignor	)	
	)	
and	)	
	)	
Teleglobe USA LLC	)	
Assignee	)	
	)	
Teleglobe Inc.	)	
(Debtor-in-Possession)	)	
Transferor	)	
	)	
and	)	File No. ITC-T/C-2003_____
	)	
TLGB Corporation	)	WC Docket No. 03- <u>33</u>
Transferee	)	
	)	
Application for Approval of Assignment and	)	
Transfer of International and Domestic	)	
Section 214 authority	)	

**APPLICATION FOR APPROVAL OF ASSIGNMENT AND TRANSFER OF  
INTERNATIONAL AND DOMESTIC SECTION 214 AUTHORIZATIONS**

Teleglobe USA Inc. (Debtor-in-Possession) (“Old Teleglobe”), Teleglobe Inc. (Debtor-in-Possession) (“Teleglobe”), Teleglobe USA LLC (“New Teleglobe”), and TLGB Corporation (“TLGB”) (collectively, the “Applicants”) through their undersigned counsel and pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214 (the “Act”), and Sections 63.04 and 63.24(e) of the Rules of the Federal Communications Commission (“Commission”), 47 C.F.R. §§ 63.04 and 63.24(e), hereby seek approval of the sale of Old Teleglobe’s telecommunications business out of bankruptcy to TLGR. Towards this end, Applicants specifically notify the Commission of the *pro forma* assignment of Old

Tele globe's domestic and international Section 214 authorizations, from Old Tele globe to New Tele globe, and seek approval for the subsequent transfer of control of New Tele globe to TLGB.

Pursuant to Section 63.04(b) of the Commission's Rules, 47 C.F.R. § 63.04(b), Applicants are filing a combined domestic and international Section 214 transfer of control application. In connection with Old Tele globe's international Section 214 authorizations, Applicants provide below the information required by Section 63.24(e) of the Commission's Rules, 47 C.F.R. § 63.24(e). Exhibit A provides the additional information requested by Section 63.04(a)(6) through (a)(12) of the Commission's Rules, 47 C.F.R. § 63.04(a)(6)-(12), in connection with the transfer of the domestic Section 214 authority.

The Applicants respectfully request streamlined, expedited treatment of this application pursuant to Section 63.12 of the Commission's Rules, 47 C.F.R. § 63.12. This application qualifies for streamlined treatment because: (i) neither TLGB nor New Tele globe is affiliated with a dominant foreign carrier: (ii) as a result of the transaction TLGB and New Tele globe will be affiliated with foreign carriers in Australia, Canada, Hong Kong, Spain and the United Kingdom, but all of these foreign affiliates qualify for a presumption of non-dominance under Section 63.10(a)(3) of the Commission's Rules, 47 C.F.R. § 63.10(a)(3); and (iii) none of the other scenarios outlined in Section 63.12(c) of the Commission's Rules, 47 C.F.R. § 63.12, applies.

**1. The Applicants**

**A. Old Tele globe and Tele globe Inc. (Debtor-in-Possession)**

Old Tele globe is a Delaware corporation providing both facilities-based and resold telecommunications services to customers in the United States. Old Tele globe is an indirect wholly-owned subsidiary of Tele globe Inc. (Debtor-in-Possession), a provider of international

telecommunications services in Canada and around the world. In a letter dated May 6, 2002, Teleglobe USA Inc. notified the Commission of the *pro forma* assignment of its international Section 214 authorizations to Teleglobe USA Inc. (Debtor-in-Possession) in connection with a restructuring proceeding commenced in Canada (the “Restructuring Notification”). At the same time, Teleglobe USA Inc. filed for approval of the *pro forma* assignment of its cable landing licenses to Teleglobe USA Inc. (Debtor-in-Possession) (the “Restructuring Application”).<sup>1</sup> Approval for the *pro forma* assignment of the cable landing licenses was granted on December 5, 2002.<sup>2</sup>

## **B. New Teleglobe**

New Teleglobe is a newly formed limited liability company organized under the laws of Delaware for the purpose of carrying out the transaction described herein. Initially, New Teleglobe will exist as a wholly owned subsidiary of Old Teleglobe. Following consummation of the proposed transaction, New Teleglobe will exist as a wholly owned subsidiary of TLGB. As discussed in greater detail below, New Teleglobe, as the successor of Old Teleglobe, will acquire substantially all of Old Teleglobe’s assets, as well as the experience of its personnel in providing telecommunications services.

## **C. TLGB**

TLGB is a Delaware holding company that, after consummation of the proposed transaction, will be the direct parent company of New Teleglobe. TLGB is an indirect wholly-owned subsidiary of Teleglobe International Holdings Ltd. (“TIH”), a newly-formed Bermuda corporation.

---

<sup>1</sup> FCC File No. SCL-ASG-20021021-00096

See Actions Taken Under Cable Landing License Act, DA No. 02-3369, released December 5, 2002.

The majority owners of TIH are four investment funds that are affiliated with Cerberus Capital Management, LP (“Cerberus”). Cerberus is a private equity fund based in New York that manages over \$8 billion in assets, including investments in the technology and telecommunications sectors. The Cerberus funds are controlled by Stephen Feinberg, a U.S. citizen who is CEO of Cerberus.

Each of the four Cerberus funds will have at least a 10%, but less than a 50%, ownership interest in TIH. The precise ownership interests of each of the funds will not be known until shortly before closing. Collectively, however, the funds will have a greater than 50% ownership interest in TIH, and therefore will be the majority owners and controlling entities with respect to TIH.

#### **11. Old Telelobe’s Petition in Bankruptcy**

On May 15, 2002, Telelobe, as well its subsidiaries, including Old Telelobe, applied for an order in the Ontario Superior Court of Justice pursuant to the Companies’ Creditors Arrangement Act of Canada (“CCAA”), R.S.C. 985, c. C-36, commencing a restructuring proceeding and providing Telelobe and its subsidiaries protection against creditor actions while they formulate a restructuring plan.

On May 28, 2002, Old Telelobe and Telelobe Inc.’s other U.S. subsidiaries filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, in the United States Bankruptcy Court for the District of Delaware. Telelobe’s U.S. subsidiaries’ Chapter 11 cases (the “US Chapter 11 Proceedings”) and together with the CCAA Proceedings, the “Bankruptcy Proceedings”) have been consolidated for procedural purposes and are being administered jointly.

As part of the Bankruptcy Proceedings, Telelobe, Old Telelobe and all their affiliates are undergoing a reorganization (the “Telelobe Reorganization”) which, among

other steps, involves the transfer and sale of Old Telelobe's telecommunications assets and businesses in the United States. On October 10, 2002, the Bankruptcy Court entered an Order holding that TLGB's affiliate, TLGB Acquisition LLC, had submitted the highest and best offer for the U.S. assets of Telelobe, Inc. and its U.S. debtor subsidiaries (the "Sale Order"). The Bankruptcy Court authorized Telelobe Inc. and its U.S. subsidiaries, including Old Telelobe, to consummate the transaction described below. A copy of the Sale Order is attached as Exhibit B.

### **III. The Proposed Transaction**

In furtherance of the Telelobe Reorganization, on September 19, 2002, Telelobe, together with certain of its subsidiaries: including Old Telelobe, (collectively "Sellers"), and TLGB's affiliate, TLGB Acquisition LLC, executed a purchase agreement (the "Purchase Agreement") and certain ancillary agreements (collectively, the "Proposed Transaction"). Pursuant to the Proposed Transaction, Old Telelobe formed a limited liability company under the laws of Delaware (*i.e.*, New Telelobe) as a wholly-owned subsidiary of Old Telelobe. Immediately prior to the closing of the Proposed Transaction, Old Telelobe will assign substantially all of its assets, including its international and domestic Section 214 authorizations, to New Telelobe. At closing, Old Telelobe will then transfer 100% of the stock of New Telelobe to TLGB. As a result of the sale, New Telelobe will succeed to the current business and operations of Old Telelobe and will exist as a wholly-owned subsidiary of TLGB. A chart of the transaction is attached as Exhibit C. The Proposed Transaction will be consummated in a seamless fashion and will not inconvenience or harm Old Telelobe's customers. The Applicants expect to consummate the Proposed Transaction as soon as all necessary regulatory approvals are obtained.

#### **IV. The Proposed Transaction Will Serve the Public Interest**

The Proposed Transaction described herein is in the public interest because it will lead to the emergence of a stronger and better-financed competitor in the market for telecommunications services in and between the continental United States and international points. Under TLGB's ownership, New Teleglobe will be able to operate in a more efficient and economical manner and will have better access to capital needed to maintain and grow New Teleglobe's competitive *telecommunications* business. TLGB's acquisition of Old Teleglobe's business will permit New Teleglobe to continue to provide the high quality services that Old Teleglobe currently offers to U.S. consumers. This will enhance competition and thus serve the public interest.

#### **V. Timing**

As discussed above, the Proposed Transaction is an important component of the Teleglobe Reorganization and timely securing necessary regulatory authorities is key to stabilizing the assets to be sold. Accordingly, the Applicants request that the Commission commence its examination of the Proposed Transaction immediately. Given the magnitude of Teleglobe's bankruptcy and its far-reaching effects, it is in the interest of all parties – Teleglobe, Old Teleglobe, their customers, creditors, employees, and TLGB – that the reorganization process be completed quickly. The parties have been mindful of the need to structure a transaction and proceed as quickly as possible to avoid any confusion or inconvenience to customers. The public interest would therefore support commencement of the review process at this time.

**VI. Information Required by Section 63.24(e) of the Commission's Rules**

In support of this application, the Applicants submit the following information pursuant to Section 63.24(e) of the Commission's Rules, including the information requested in Section 63.18:

(a) Name, address and telephone number of Applicants:

Teleglobe USA Inc. (Debtor-in-Possession)  
FRN: 0007-4667-82  
11495 Commerce Park Drive  
Reston, Virginia 20191  
(703) 755-2430

Teleglobe Inc. (Debtor-in-Possession)  
FRN: 0007-5397-29  
11495 Commerce Park Drive  
Reston, Virginia 20191  
(703) 755-2430

Teleglobe USA LLC  
FRN: 0008-1763-07  
11495 Commerce Park Drive  
Reston, Virginia 20191  
(703) 755-2430

TLGB Corporation  
FRN: 0008-1801-84  
1000 de La Gauchetiere West  
Montreal, Quebec H3B 4X5, Canada  
(514) 868-7788

(b) Old Teleglobe is a corporation organized under the laws of Delaware. New Teleglobe and TLGB are limited liability companies also organized under the laws of Delaware. Teleglobe is a corporation organized under the laws of Ontario, Canada.

- (c) Correspondence concerning this Application should be sent to:

For Old Teleglobe, Teleglobe and New Teleglobe:

Charles A. Tievsky  
Assistant General Counsel  
Teleglobe USA Inc.  
1 1495 Commerce Park Drive  
Reston, VA 20191  
(703) 755-2430

with a copy to:

Catherine Wang  
Troy F. Tanner  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, DC 20007  
(202) 424-7500

For TLGB:

Lilian C. Opdam  
General Counsel  
TLGB Corporation  
1000 de La Gauchetiere West  
Montreal, Quebec H3B 4X5, Canada  
(514) 868-7788

with a copy to:

Frederick M. Joyce  
Alston & Bird, LLP  
601 Pennsylvania Avenue, NW  
North Building, 10<sup>th</sup> Floor  
Washington, DC 20004  
(202) 756-3376

- (d) Teleglobe Inc., New Teleglobe and TLGB do not hold any FCC licenses. A list of the Section 214 authorizations held by Old Teleglobe is appended hereto as Exhibit D.
- (e)(3) By this Application, Applicants seek authority for a transaction that will result in the *pro forma* assignment of Old Teleglobe's international and domestic Section 214 authorizations to New Teleglobe and the transfer of control of New Teleglobe, a non-dominant common carrier, from Teleglobe to TLGB.
- (f) Not applicable.

- (g) Not applicable.
- (h) The following entities will hold a 10% or greater ownership interest in TLGB:

TLGB is 100% owned by TLGB Netherlands Holdings BV (“TLGB NV”), a Dutch corporation whose corporate address is Strawinskylaan 31 11, 7th Floor, 1077 ZX Amsterdam, Netherlands. TLGB NV, in turn, will be 100% owned by a Luxembourg company that is in the process of formation (“TLGB Luxembourg”).<sup>9</sup> TLGB Luxembourg will be 100% owned by Teleglobe International Holdings Ltd. (“TIH”), a Bermuda corporation. The owners of TIH are primarily a group of investment funds, listed below, that are affiliated with Cerberus Capital Management, LP (“Cerberus”). Cerberus is a private equity fund based in New York that manages over \$8 billion in assets, including investments in the technology and telecommunications sectors.

The four Cerberus funds will each have at least a 10%, but less than a 50%, ownership interest in TIH. The precise ownership interests of each of the funds will not be known until shortly before closing. All of the funds together have a greater than 50% ownership interest in TIH, and therefore will be the majority owners and controlling entities with respect to TIH. These Cerberus funds are controlled by Stephen Feinberg, a U.S. citizen and CEO of Cerberus. Mr. Feinberg possesses sole power to vote and direct the disposition of, and may therefore be deemed to beneficially own, all of the TIH stock owned by the Cerberus funds.

Cerberus Institutional Partners, L.P.  
450 Park Avenue  
New York, NY 10022  
Citizenship: Delaware  
Principal Business: Investments

Cerberus Institutional Partners (America), L.P.  
450 Park Avenue  
New York, NY 10022  
Citizenship: Delaware  
Principal Business: Investments

Cerberus Partners, L.P.  
450 Park Avenue  
New York, NY 10022  
Citizenship: Delaware  
Principal Business: Investments

---

<sup>9</sup> TLGB Luxembourg will be a newly-formed company created for purposes of the proposed transaction. It is an intermediate holding company in which no party other than the persons and entities identified in this Application will hold any ownership interest.

Cerberus International, Ltd.  
c/o Oceanic Bank and Trust Limited  
TK House, Bayside Executive Park  
West Bay Street and Blake Road  
P.O. Box AP59213  
Nassau, Bahamas  
Citizenship: Bahamas  
Principal Business: Investments

There are no other shareholders of TIH who directly or indirectly own 10 percent or more of its, and in turn, TLGB's equity.

TLGB certifies that none of TLGB's board of directors also serve on the board of a foreign telecommunications carrier or a holding company whose subsidiary is a foreign telecommunications carrier.

- (i) TLGB certifies that it is not a foreign carrier within the meaning of 63.09(d) of the Commission's Rules. However, as a result of the Proposed Transaction, TLGB will be affiliated within the meaning of Section 63.09 (e) of the Commission's Rules with several foreign carriers. As part of the Proposed Transaction, TLGB's Cerberus owners will be acquiring some of Teleglobe's subsidiaries that are non-dominant carriers in other countries. Therefore, New Teleglobe will be affiliated with non-dominant carriers in Australia, Canada, Hong Kong, Spain and the United Kingdom.
- (j) TLGB certifies that through its acquisition of control and operation of New Teleglobe, it does not **seek** to provide international telecommunications services to any destination country where: (i) TLGB is a foreign carrier; (ii) any entity that owns more than 25 percent of TLGB, or that controls TLGB, controls a foreign carrier in that country; or (iii) two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate more than 25 percent of TLGB and are parties to, or the beneficiaries of, a contractual relation affecting the provision or marketing or international basic telecommunications services in the United States. However, TLGB Corporation certifies pursuant to Section 63.18(j)(2) of the Commission's Rules that, by virtue of its affiliation with entities to be created by its Cerberus owners for purposes of these related transactions, it seeks to provide international telecommunications to several countries in which TLGB Corporation's owners will control non-dominant foreign carriers. In particular, TLBG's owners will control Teleglobe's former non-dominant carriers in Australia (Teleglobe Australia Pty Limited), Canada (through a newly formed entity to be formed in Canada **by** Teleglobe Canada Limited Partnership), Hong Kong (Teleglobe Hong Kong Ltd.), Spain (Teleglobe International Communications **S.A.**) and the United Kingdom (through a newly formed entity to be formed in the UK by Teleglobe International (UK) Limited). TLGB also notes that Old Teleglobe was regulated as dominant in Canada because of its affiliation with Bell Canada. However, after consummation of the Proposed Transaction, Teleglobe USA LLC will not be affiliated with Bell Canada.
- (k) The foreign carriers listed above in Section (j) of this application are based in countries that are Members of the World Trade Organization. None of these carriers

are listed on the Commission's List of Foreign Telecommunications Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets. released June 18, 1999. In addition, these foreign carriers offer services in competition with dominant foreign carriers and others. These foreign carriers each hold significantly less than a 50 percent market share in the international transport market between the U.S. and their home markets and in the local access markets in the countries where they operate. Moreover, these foreign carriers do not have the ability to discriminate against unaffiliated U.S. international carriers through the control of bottleneck services or facilities to exercise market power in the countries where they operate. Accordingly, TLGB's foreign carrier affiliates lack sufficient market power on the US.-international routes on which they operate to affect competition adversely in the U.S. market. Therefore, New Teleglobe should be presumptively classified as a non-dominant carrier on all international routes.

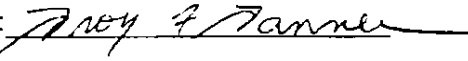
- (l) TLGB, through New Teleglobe, may resell international switched services of unaffiliated U.S. carriers in order to provide telecommunications services to countries where it has foreign carrier affiliations. As demonstrated above, each of these affiliated foreign carriers should be presumptively found to be non-dominant pursuant to Section 63.10(a)(3) of the Commission's Rules.
- (m) TLGB qualifies for a presumption of non-dominance under Section 63.10(a)(1) and (3) of the Commission's Rules, 47 C.F.R. § 63.10(a)(1) and (3) because it is not a foreign carrier, and as demonstrated above in Section (k), its proposed affiliations will be with non-dominant foreign carriers in Australia, Canada, Hong Kong, Spain and the United Kingdom. Old Teleglobe previously was regulated as dominant to Canada because of its affiliation with Bell Canada. As a result of this Proposed Transaction, however, New Teleglobe will not be affiliated with Bell Canada and therefore should be regulated as non-dominant to Canada.
- (n) TLGB certifies that it has not agreed to accept special concessions, as defined in Section 63.14(b) of the Commission's Rules, 47 C.F.R. §63.14(b), directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route, and will not enter into such agreements in the future.
- (o) Teleglobe and TLGB certify, pursuant to Sections 1.2001 through 1.2003 of the Commission's Rules (implementing the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 3301), that they are not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.
- (p) TLGB requests streamlined processing of this application pursuant to Section 63.12 of the Commission's Rules, 47 C.F.R. §63.12. This application qualifies for streamlined processing under Section 63.12(c) of the Commission's Rules, 47 C.F.R. §63.12(c) because TLGB qualifies for a presumption of non-dominance under Section 63.10(a)(1) and (3) of the Commission's Rules, 47 C.F.R. §63.10(a)(1) and (3), as detailed in response to paragraph (m) above. Also, New Teleglobe will not be affiliated with Bell Canada, and should therefore be regulated as non-dominant to Canada.

## VII. CONCLUSION

Based on the foregoing, the Proposed Transaction, including the transfer of control of New Teleglobe and its domestic and international Section 214 authorizations to TLGB will serve the public interest, convenience, and necessity

Respectfully submitted,

**Teleglobe USA Inc.**  
**Teleglobe Inc.**  
**Teleglobe USA LLC**  
**TLGB Corporation**

By: 

Frederick M. Joyce  
Alston & Bird, LLP  
601 Pennsylvania Ave, NW  
North Building, 10<sup>th</sup> Floor  
Washington, DC 20004

*Counsel to TLGB Corporation*

Catherine Wang  
Troy F. Tanner  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W. Suite 300  
Washington, DC 20007

*Counsel to Teleglobe USA Inc.,  
Teleglobe Inc., and Teleglobe USA LLC*

Date: January 9, 2003